



## BRIEFING: APRIL 2012 BOARD MEETING

TO: Chairman Richard and Board Members

FROM: Tom Fellenz, Interim Chief Executive Officer/General Counsel

DATE: April 19, 2012

RE: Agenda Item Number 7 Draft Small and Disadvantaged Business Enterprise Program

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### **Discussion:**

This Agenda item makes two (2) requests of the Board.

- 1) Approve the Draft Small and Disadvantaged Business Enterprise Program; and
- 2) Authorize the Authority to submit the revised S/DBE Program to Federal Railroad Administration for its approval.

**Item 1:** Pursuant to the Grant/Cooperative Agreement between Federal Railroad Administration (FRA) and the Authority, dated August 8, 2011 The FRA directed the Authority to develop and implement a S/DBE Program to address how the Authority and its Design-Builders will ensure that small businesses, including DBEs, have an opportunity to bid on the rail contracts and participate in the project construction. The FRA further stated that the draft plan must be published for public input through a 45 day public comment period. Evidence of the 45 day public comment period and consideration of the public's comments, together with the final plan, is to be submitted to FRA for approval of the plan.

Following the Board's approval of the Draft S/DBE Program and authorization to proceed with the mandated public facilitation process on November 3, 2011; the Authority entered into a 45 day public comment period. The Board further suggested an extension of the comment period in consideration of the holiday season to ensure maximum public participation. The Board asked that the extension be vetted through FRA. The FRA concurred with the extension. The Public Facilitation process was then extended through January 16, 2012.

## **Overview:**

**Public Facilitation-** The following serves to summarize the public notification process undertaken by the Authority to release the Authority's Draft Small and Disadvantaged Business Enterprise Program and solicit the public's input:

### *Electronic Notifications*

- Authority developed a database of over 21,000 S/DBEs, business organizations, and non-S/DBEs stakeholders to distribute information pertinent to the Authority's draft S/DBE Program.
- 10 Electronic Notifications were distributed to the compiled stakeholder list from November 15, 2011 – January 13, 2012.
- Over 162,270 emails were issued to solicit comments and advise of the Listening Sessions and opportunity to provide public comment.

### *Public Notices*

- Public Notices were placed in 21 diverse news media publications to notify the public that the Authority was soliciting public comments on the Draft SB/DBE Program.
- The publications ranged from news periodicals to online construction reports with distribution and readership encompassing various geographic regions of the state, such as Los Angeles Times, Small Business Enterprise (publication) Sacramento Bee, San Jose Mercury News, Daily Construction Reporter and La Opinion.

### *Listening Sessions*

- The Authority publicized and facilitated the following three (3) Listening Sessions to provide the public with direct access to the Authority to ask questions, provide commentary and network with firms who attended:
  - December 1, 2011- San Francisco, California (89 Attendees)
  - December 13, 2011- Merced, California (35 Attendees)
  - January 12, 2012- Los Angeles, California (111 Attendees)

### *Senate Select Committee on Procurement: Informational Hearing*

- The Authority participated in an Informational Hearing conducted by the Senate Select Committee on Procurement and hosted by Senator Curren Price on January 5, 2012.
- The intent of the Informational Hearing was to provide the public with an overview on the Authority's Draft S/DBE Program.
- Eighty (80) attendees participated in the Informational Hearing. The participants provided commentary and immediately received answers to their questions from the Authority's Small Business liaisons: Chris Ryan, Patricia Padilla and Olivia Fonseca.

### *Website*

- The Authority encouraged individuals visiting the website to submit their on-line commentary, on the Draft S/DBE Program.
- The Small Business Resources section of the website provided the public the opportunity to download and review the S/DBE Policy and Draft S/DBE Program, as well as access any materials or documentation presented and distributed during the listening sessions.

Summary of Public Comments	
Submission Method	Submissions
Electronic – Email	144
Electronic – Website	19
Listening Sessions San Francisco, Merced and Los Angeles	40
Senate Select Committee on Procurement: Informational Hearing	21
Other	11
<b>Total Number of Submissions</b>	<b>235</b>

While 235 submissions were received during the public facilitation process; 29% (67) of the submissions were not pertinent to the S/DBE Program. The remaining submissions were evaluated for modification to the Authority's draft S/DBE Program. The most recurring recommendations and/or comments included the following:

- How to contract with the Authority and Design Builders;
- Overall SB Goal should be broken out for each small business group identified;
- How are the Contractors going to be held accountable to meet the goal;
- Set aside contracts for S/DBEs, including DVBES and Microbusinesses; and
- Unbundle contracts for greater S/DBE participation.

An abbreviated summary of the most significant modifications made to the Draft S/DBE Program that provided added value to the overall administration and delivery of the program include:

- Incorporation of additional reporting of SB utilization by group, including Quarterly Board Presentation by Contractor of Status of SB Utilization to increase accountability.
- Requirement to utilize Contractor websites to post available work opportunities and the additional use of a toll free contact number to increase overall accessibility.
- Additional role and responsibility of the Authority's SB Liaison Officer to facilitate the Business Advisory Council and submit SB utilization reports for the Council review.
- New responsibility of the Authority's SB Liaison Officer will also include being the recipient of the various reports that are prepared for State and Federal officials.
- Required Contractors to be creative and innovative in addressing bonding hurdles and capacity building for SBs in establishing required lines of credit.
- Strengthen protocols to ensure subcontractor success.
- Additional role of the Contractor's SB Officer is to assist in the development of the Contractor's supportive services, such as mentor protégé program and other technical assistance services.
- Added to the Contractor's SB Officer's responsibility to convene a quarterly Stakeholder's meeting to promote networking and outreach efforts.
- Added a component to more effectively leverage all available government and private resources to partner with the Authority.
- Added a requirement that the Contractor post on its project website, a list of SBs, regardless of tier, who are being utilized to meet the overall SB Project goal.
- Strengthened administrative remedies and/or sanctions to address Contractor non-compliance with program goals and objectives.

The S/DBE Program did make one major change and that was the removal of Subpart G: Workforce Development Partners. The Authority felt the S/DBE Program should be specific to the objectives of ensuring S/DBE utilization on the project.

An acknowledgement of receipt was issued to each of the commenter's via e-mail or letter, thanking them for their leadership and input.

Upon approval and adoption of the Authority's S/DBE Program, the document along with the Public Facilitation responses will be transmitted to FRA for its approval. The Authority will precede with implementation of its Draft Program unless otherwise advised by FRA.

**Recommendations:**

- 1) Approve the Draft Small and Disadvantaged Business Enterprise Program; and
- 2) Authorize the Authority to submit the revised Draft S/DBE Program to FRA for its approval.

**Attachments:**

Draft S/DBE Program  
Public Facilitation Comments  
Resolution HSRA 12-26